

13049  
RECORDATION NO. .... Filed 1425

APR 13 1981 - 2 50 PM

No. 1-103A162  
APR 13 1981

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(1)

MEMO.

INTERSTATE COMMERCE COMMISSION Date

Fee \$ 50.00

Interstate Commerce Commission  
Washington, D. C.

ICC Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of 49 USC 11303(a) are the original and eight counterparts of a Reconstruction Agreement dated as of April 1, 1981.

A general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner: The Connecticut Bank and Trust Company  
One Constitution Plaza  
Hartford, Connecticut 06115

Rebuilder: Waterloo Railroad Company  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601

The undersigned is the Owner mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and seven copies of the Reconstruction Agreement to James Markey, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee under  
I.C.G. Trust No. 81-2

By

Its

ASSISTANT VICE PRESIDENT

OWNER AS AFORESAID

Enclosures

FEE OPERATION BR  
I.C.C.

APR 13 2 41 PM '81

RECEIVED

SCHEDULE A

DESCRIPTION OF EQUIPMENT

ITEMS PRIOR TO RECONSTRUCTION:

13 SW-14 Diesel Locomotives Marked and Numbered  
ICG 1201, ICG 1206, IC 477, IC 439, ICG 471, IC 467,  
ICG 484, IC 458, CIW 102, IC 441, ICG 478, ICG 482,  
CIW 101

ITEMS AFTER RECONSTRUCTION OR CONSTRUCTION:

13 SW-14 Rebuilt Locomotives Marked and Numbered  
ICG 1465 through ICG 1477, both inclusive

300 100-ton Open Top Hopper Cars Marked and Numbered  
ICG 387200 through ICG 387499, both inclusive

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/13/81

OFFICE OF THE SECRETARY

James Markey, Esq.  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 4/13/81 at 2:50pm, and assigned re-recording number(s). 13049, 13050 & 13051

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

WATERLOO

13049

RECORDATION NO. \_\_\_\_\_ Filed 1428

APR 13 1981 -2 50 PM

INTERSTATE COMMERCE COMMISSION Matter No. 34174-3

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RECONSTRUCTION AGREEMENT

Dated as of April 1, 1981

Between

WATERLOO RAILROAD COMPANY

REBUILDER

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee under I.C.G. Trust No. 81-2

OWNER

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(I.C.G. Trust No. 81-2)  
(13 Rebuilt Locomotives)

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Attachment to Reconstruction Agreement:

Schedule A - Description of Equipment

## RECONSTRUCTION AGREEMENT

THIS RECONSTRUCTION AGREEMENT dated as of April 1, 1981 is between WATERLOO RAILROAD COMPANY, an Iowa corporation (the "Rebuilder") and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not individually but solely as Trustee (the "Owner") under a Trust Agreement dated as of April 1, 1981 (the "Trust Agreement") with IRFC Leasing 5 Corporation (the "Trustor").

### R E C I T A L S:

A. The Owner and the Rebuilder, inter alia, have entered into a Participation Agreement dated as of April 1, 1981 (the "Participation Agreement").

B. Pursuant to a Hulk Purchase Agreement dated as of April 1, 1981 (the "Hulk Purchase Agreement") between the Owner and the Rebuilder, the Owner has agreed to purchase certain used locomotives described in Schedule A hereto (collectively the "Hulks" and individually a "Hulk") which are to be reconstructed by the Rebuilder in accordance with the Owner's specifications therefor set forth in Annex I of Schedule A hereto (hereinafter, with such modifications therein as may be approved by the parties hereto, called the "Specifications"), and the Owner proposes to pay for such reconstruction of the Hulks at the price, in the manner and upon the terms and conditions hereinafter provided.

C. Pursuant to an Equipment Lease dated as of April 1, 1981 (the "Lease") the Owner will, upon completion of the reconstruction of a Hulk (such reconstructed Hulk being herein called an "Item of Equipment" and such items collectively herein called the "Equipment"), lease, as lessor, the Item of Equipment to Illinois Central Gulf Railroad Company (the "Lessee"), as lessee.

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter set forth, the Owner and the Rebuilder hereby agree as follows:

### SECTION 1. RECONSTRUCTION OF THE EQUIPMENT.

The Rebuilder agrees at all times under and pursuant to the instruction, direction and control of the Owner (i) to reconstruct the Hulks, in accordance with the Specifications, for the Owner, (ii) to number and mark each Item of Equipment with the road numbers specified with respect thereto in the Lease, (iii) to cause each Item of Equipment to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each Item of Equipment in letters not less than one inch in height with the words "Leased from a Bank or Trust Company, as Trustee, and Subject to a Security

Interest Recorded with the I.C.C.", and (iv) to deliver each Item of Equipment to the Owner, as and when so reconstructed, marked and numbered, all for the Reconstruction Cost provided in Section 5 hereof. The Rebuilder warrants to the Owner that the design, quality and component parts of each Item of Equipment as so reconstructed will conform to all applicable laws, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment (as so reconstructed) as of the date such Item of Equipment is delivered to the Lessee; provided, however, that in the event any such requirements, specifications or standards as of such date are revised from the requirements, specifications or standards as in effect on the date hereof, the Rebuilder shall consult with the Owner and obtain its consent to modify the Specifications to conform to such revision.

## SECTION 2. TIME AND PLACE OF DELIVERY; WARRANTY.

The Owner will deliver the Hulks, or cause the Hulks to be delivered, to the Rebuilder at the plant of the Rebuilder located at the rebuilding site identified in Schedule A hereto. The Rebuilder will deliver the reconstructed Equipment to the Owner for acceptance in the manner provided in Section 4 hereof with freight charges, if any, prepaid by the Rebuilder at the delivery point or points mutually agreed upon by the Owner and the Rebuilder from time to time following the execution and delivery of this Agreement, but such delivery and acceptance for each Item of Equipment shall take place prior to the Outside Delivery Date provided in Section 3 hereof. The Rebuilder agrees and warrants to the Owner that it will not accept for reconstruction, nor commence any reconstruction of, any Hulk if (i) the Rebuilder cannot fully reconstruct such Hulk in accordance with the Specifications prior to the Outside Delivery Date provided in Section 3 hereof, (ii) an Event of Default under the Lease, or an event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default thereunder, shall have occurred, (iii) there shall have been commenced any proceeding or there shall have been filed any petition under the Federal or any local bankruptcy or insolvency laws by or against the Rebuilder or any of its property, or (iv) the Owner or any Participant (as defined in the Participation Agreement) shall have delivered written notice to the Rebuilder that any condition contained in Sections 4.1 through 4.6 of the Participation Agreement which is by its terms to be satisfied on or prior to the date of such notice has not been satisfied or waived.

## SECTION 3. OUTSIDE DELIVERY DATE.

The Rebuilder agrees that all Items of Equipment will be reconstructed and delivered prior to June 25, 1981 (the "Outside Delivery Date"). The Rebuilder's obligations to so reconstruct

and deliver shall be absolute and unconditional, regardless of any events which might otherwise be deemed to constitute force majeure. In the event that the Rebuilder fails to perform such obligations, Section 11 hereof shall apply.

#### SECTION 4. INSPECTION AND ACCEPTANCE.

The Owner shall designate a representative to accept delivery of each Item of Equipment hereunder, which representative may be an employee of the Lessee. Notwithstanding the acceptance of an Item of Equipment hereunder by the Owner, all of the Rebuilder's obligations herein set forth shall survive delivery, including, without limitation, the obligation to rebuild the Hulks in accordance with the Specifications.

#### SECTION 5. PAYMENT FOR RECONSTRUCTION OF EQUIPMENT.

The reconstruction cost for each Item of Equipment shall be the amount set forth on Schedule A hereto for such Item of Equipment (the "Reconstruction Cost"). The Reconstruction Cost for each Item of Equipment shall be set forth in an invoice covering the respective Items furnished by the Rebuilder to the Owner on or prior to the Rebuilt Equipment Closing Date (as defined in the Participation Agreement) on which the Reconstruction Cost thereof is to be paid by the Owner, which invoice shall be accompanied by a statement of the Rebuilder setting forth its opinion to the effect that the Reconstruction Cost of the Items of Equipment covered thereby plus the Hulk Purchase Price (as defined in the Hulk Purchase Agreement) of the reconstructed Hulks covered by that invoice does not exceed the fair market value of such Items of Equipment. Subject to the fulfillment of the applicable conditions in the Participation Agreement, payment of the Reconstruction Cost for each Item of Equipment shall be made to the Rebuilder on the Rebuilt Equipment Closing Date therefor under the Participation Agreement by wire transfer of immediately available funds to such bank located in the United States as the Rebuilder shall designate by not less than five days' prior notice to the Owner in writing.

#### SECTION 6. RECONSTRUCTION WARRANTY.

THE OWNER MAKES NO WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE HULKS OR THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE EQUIPMENT HEREUNDER. The Rebuilder warrants that the Hulks will be reconstructed in accordance with the Specifications and any changes thereto approved by the Owner and warrants the reconstructed Items of Equipment will be free from defects in material, workmanship and design under normal use and service, the obligation of the Rebuilder under this Section 6 being



limited to making good at its plant any part or parts of any reconstructed Item of Equipment, which shall, within one year after the delivery of such reconstructed Item of Equipment to the Owner, be returned to the Rebuilder with transportation charges prepaid, and which upon examination by the Rebuilder, shall be disclosed to its reasonable satisfaction to have been thus defective. This warranty is expressly in lieu of all other warranties (other than warranties of subcontractors and suppliers which are hereby assigned to the Owner, and the warranties of the Rebuilder contained herein), express or implied, and of all other obligations or liabilities on the part of the Rebuilder except as herein provided, and the Rebuilder neither assumes nor authorizes any person to assume for it any other liability in connection with the reconstruction of the Equipment and delivery of the reconstructed Equipment except as aforesaid. The Rebuilder further agrees with the Owner that the acceptance of any reconstructed Item of Equipment hereunder shall not be deemed a waiver by the Owner of any of its rights under this Section.

#### SECTION 7. REPRESENTATION AND WARRANTY AS TO TITLE.

The Rebuilder represents that upon completion of the reconstruction of each Item of Equipment hereunder, at the time of delivery and acceptance of such Item by the Lessee as lessee under the Lease, such Item will be free and clear of all liens and encumbrances of persons claiming by, through or under the Rebuilder, other than the right of the Rebuilder to be paid the Reconstruction Cost for such Item as herein provided and the liens and encumbrances created by the Owner and Trustor under the Operative Agreements (as defined in the Participation Agreement). The Rebuilder further warrants that it will pay and discharge any and all claims which might constitute or become a lien or charge upon such Item other than claims arising from, through or under the Owner or the Trustor unless the Rebuilder shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not, in the opinion of the Owner, affect or endanger the title and interest of the Owner to such Item. The Rebuilder's obligations under this Section 7 shall survive the completion of reconstruction and payment for the Equipment as provided herein.

#### SECTION 8. REBUILDER'S INDEMNITY.

The Rebuilder hereby agrees to indemnify and hold the Owner in both its individual and fiduciary capacities and the Trustor and the Note Purchaser (as defined in the Participation Agreement) and their respective successors, assigns, directors, officers and agents harmless from and against any and all losses, claims, liabilities and expenses which arise out of or relate to

the ownership interest of the Owner in any Hulk during the period of reconstruction thereof or the reconstruction of such Hulk or any testing or other processing of such Hulk prior to acceptance of such reconstructed Hulk by the Lessee under the Lease (including claims for patent, trademark or copyright infringement in connection with the reconstruction of such Hulk as provided herein and claims for strict liability in tort).

#### SECTION 9. INSURANCE.

The Rebuilder will at all times during the period from the delivery of a Hulk to it hereunder to and including the (a) delivery of such Hulk as an Item of Rebuilt Equipment to the Lessee under the Lease or (b) sale or other disposition of a Non-completed Hulk (as hereinafter defined) pursuant to Section 11 hereof, at its own expense, cause the Hulks to be insured, in the same manner and to the same extent as if such Hulks were subject to the insurance provisions of Section 11 of the Lease, and evidence thereof shall be furnished as provided in the Lease.

#### SECTION 10. RIGHT OF INSPECTION.

During reconstruction, including, without limitation, all phases of fabrication and assembly, the Hulks and all work thereon shall be subject to inspection and approval by the Owner, the Trustor, the Security Trustee and the Note Purchaser; provided, however, that any inspection or failure to inspect by any such party shall not affect any of their respective rights hereunder. The Rebuilder shall grant to the authorized inspectors of each such party access to all portions of its plant where Hulks are being reconstructed.

#### SECTION 11. FAILURE TO RECONSTRUCT.

If and to the extent that any Hulks are not reconstructed and accepted pursuant to this Reconstruction Agreement and the Lease on or before June 25, 1981 (the "Non-completed Hulks"), the Rebuilder agrees, upon receipt of written instructions to such effect from the Owner and as agent for the Owner, to sell the Non-completed Hulks to a party other than the Rebuilder or any affiliate of the Rebuilder, on or before July 1, 1981, at the highest cash price obtainable. On July 1, 1981, the Rebuilder will pay to the Owner the Net Proceeds from such sale and, if such Net Proceeds (as defined below) are less than the Aggregate Hulk Purchase Price (as defined below) plus interest thereon at the Prime Rate (as defined in the Notes) for the period from and including the Hulk Closing Date (as defined in the Participation Agreement) to but not including July 1, 1981, the Rebuilder will, as liquidated damages for failure to complete the reconstruction of the Non-completed Hulks as provided in this Reconstruction

Agreement, pay to the Owner on July 1, 1981, an amount equal to the difference; provided that all rights of both the Rebuilder and the Owner in and to the Non-completed Hulks and the proceeds thereof shall be subject and subordinate to the prior right and security interest therein of the Security Trustee under the Security Agreement. The Owner agrees to furnish to the Rebuilder all such bills of sale, without recourse or warranty, as shall be reasonably required to enable the Rebuilder to effect the sale of the Non-completed Hulks for the account of the Owner as aforesaid. For purposes of this Section only, "Aggregate Hulk Purchase Price" shall mean the sum of the respective Hulk Purchase Prices for each Non-completed Hulk and "Net Proceeds" shall mean gross sales proceeds less selling expenses less, to the extent Net Proceeds are not reduced below the Aggregate Hulk Purchase Price plus interest thereon as described above, the Rebuilder's reasonable Reconstruction Cost plus a reasonable overhead factor (such latter deduction being hereinafter referred to as the "Rebuilder's Portion of the Gross Proceeds").

#### SECTION 12. LIMITATIONS ON LIABILITY.

Anything herein to the contrary notwithstanding, the Owner shall have no obligation to pay for the reconstruction of the Equipment unless funds sufficient for such purposes have been advanced by the Trustor. Each and all of the representations, warranties, undertakings and agreements herein made on the part of the Owner are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Reconstruction Agreement is executed and delivered by the said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence by said bank or the Trustor, as the case may be, no personal liability or personal responsibility is assumed hereunder by or shall at any time be enforceable against the said bank or the Trustor, as the case may be, on account of any representation, warranty, undertaking or agreement hereunder of the Owner or the Trustor, as the case may be, either express or implied, all such personal liability (except as aforesaid), if any, being expressly waived by the Rebuilder and by all persons claiming by, through or under the Rebuilder; provided, however, that the Rebuilder or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same; and provided further that nothing in this Section 12 shall limit the obligation of the Trustor to advance funds sufficient to pay for the reconstruction of the Equipment, subject only to the terms and conditions provided in the Participation Agreement.

SECTION 13. NOTICES.

Any notice to be given by either party hereto to the other shall be in writing and shall be deemed to have been duly given when delivered personally or otherwise actually received

at the following addresses:

If to the Rebuilder: Waterloo Railroad Company  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601  
Attention: Treasurer

If to the Owner: The Connecticut Bank and Trust  
Company  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust Department

(With copies to the Trustor at its  
address specified in the  
Participation Agreement)

or at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 14. SUCCESSORS AND ASSIGNS.

References to any party herein shall be deemed to include the successors and assigns of such party; provided, however, that no assignment by the Rebuilder or any assignee thereof shall subject any assignee to, or relieve the Rebuilder from, any of the obligations of the Rebuilder hereunder. Each party hereto may conclusively assume that there has been no assignment of the other party's rights under this Agreement unless and until it shall have been notified in writing of any such assignment by such assignor.

SECTION 15. LAW GOVERNING.

This Reconstruction Agreement shall be construed in accordance with the laws of the State of Illinois.

SECTION 16. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

(Seal)

Attest:

M. A. O'Connor  
~~Assistant~~ Secretary

WATERLOO RAILROAD COMPANY

By

R. W. Hart  
Its Vice President

REBUILDER

(Seal)

Attest:

Assistant Vice President

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee under  
I.C.G. Trust No. 81-2

By

Its Authorized Owner

OWNER

STATE OF CONNECTICUT     )  
                                      ) SS  
COUNTY OF HARTFORD     )

On this \_\_\_\_ day of April, 1981, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF COOK     )

On this 10<sup>th</sup> day of April, 1981, before me personally appeared R W Hart, to me personally known, who being by me duly sworn, says that he is a Vice President of WATERLOO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert H. Hughes  
Notary Public

[NOTARIAL SEAL]

My commission expires: 11-23-84

## DESCRIPTION OF EQUIPMENT

Reconstruction Specifications: See Annex I hereto

Outside Delivery Date: June 25, 1981

Location of Rebuilder's Plant: Paducah, Kentucky

<u>Number of Items</u>	<u>Description of Hulk</u>	<u>Description of Rebuilt Units</u>	<u>Reconstruction Cost per Item</u>	<u>Aggregate Reconstruction Cost</u>
13	SW-14 locomotives marked and numbered as follows:  ICG 1201, ICG 1206, IC 477, IC 439, ICG 471, IC 467, ICG 484, IC 458, CIW 102, IC 441, ICG 478, ICG 482, CIW 101	ICG 1465- ICG 1477, both inclu- sive	\$417,500	\$5,427,500

ANNEX I  
TO DESCRIPTION OF EQUIPMENT

Specifications for Reconstruction

The design, quality and component parts of each Item of Equipment as reconstructed will conform to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment (as so reconstructed) as of the date of delivery of such Item and to the further specifications set forth below.

	<u>SW-14</u>
Horsepower (minimum)	1,200
Engine (minimum)	12-567BC
Generator (Main)	D15C
Traction Motors	D27, 37
Generator (auxiliary)	10KW
Air Brakes	26NL
Fuel Capacity (gallons)	600
Gear Ratio	62:15
Electric Cab Heat	



CB&T

13049

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Matter No. 34174-3

INTERSTATE COMMERCE COMMISSION

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RECONSTRUCTION AGREEMENT

Dated as of April 1, 1981

Between

WATERLOO RAILROAD COMPANY

REBUILDER

and

THE CONNECTICUT BANK AND TRUST COMPANY,  
as Trustee under I.C.G. Trust No. 81-2

OWNER

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(I.C.G. Trust No. 81-2)  
(13 Rebuilt Locomotives)

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### Attachment to Reconstruction Agreement:

Schedule A - Description of Equipment

## RECONSTRUCTION AGREEMENT

THIS RECONSTRUCTION AGREEMENT dated as of April 1, 1981 is between WATERLOO RAILROAD COMPANY, an Iowa corporation (the "Rebuilder") and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not individually but solely as Trustee (the "Owner") under a Trust Agreement dated as of April 1, 1981 (the "Trust Agreement") with IRFC Leasing 5 Corporation (the "Trustor").

### R E C I T A L S:

A. The Owner and the Rebuilder, inter alia, have entered into a Participation Agreement dated as of April 1, 1981 (the "Participation Agreement").

B. Pursuant to a Hulk Purchase Agreement dated as of April 1, 1981 (the "Hulk Purchase Agreement") between the Owner and the Rebuilder, the Owner has agreed to purchase certain used locomotives described in Schedule A hereto (collectively the "Hulks" and individually a "Hulk") which are to be reconstructed by the Rebuilder in accordance with the Owner's specifications therefor set forth in Annex I of Schedule A hereto (hereinafter, with such modifications therein as may be approved by the parties hereto, called the "Specifications"), and the Owner proposes to pay for such reconstruction of the Hulks at the price, in the manner and upon the terms and conditions hereinafter provided.

C. Pursuant to an Equipment Lease dated as of April 1, 1981 (the "Lease") the Owner will, upon completion of the reconstruction of a Hulk (such reconstructed Hulk being herein called an "Item of Equipment" and such items collectively herein called the "Equipment"), lease, as lessor, the Item of Equipment to Illinois Central Gulf Railroad Company (the "Lessee"), as lessee.

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter set forth, the Owner and the Rebuilder hereby agree as follows:

### SECTION 1. RECONSTRUCTION OF THE EQUIPMENT.

The Rebuilder agrees at all times under and pursuant to the instruction, direction and control of the Owner (i) to reconstruct the Hulks, in accordance with the Specifications, for the Owner, (ii) to number and mark each Item of Equipment with the road numbers specified with respect thereto in the Lease, (iii) to cause each Item of Equipment to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each Item of Equipment in letters not less than one inch in height with the words "Leased from a Bank or Trust Company, as Trustee, and Subject to a Security

Interest Recorded with the I.C.C.", and (iv) to deliver each Item of Equipment to the Owner, as and when so reconstructed, marked and numbered, all for the Reconstruction Cost provided in Section 5 hereof. The Rebuilder warrants to the Owner that the design, quality and component parts of each Item of Equipment as so reconstructed will conform to all applicable laws, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment (as so reconstructed) as of the date such Item of Equipment is delivered to the Lessee; provided, however, that in the event any such requirements, specifications or standards as of such date are revised from the requirements, specifications or standards as in effect on the date hereof, the Rebuilder shall consult with the Owner and obtain its consent to modify the Specifications to conform to such revision.

## SECTION 2. TIME AND PLACE OF DELIVERY; WARRANTY.

The Owner will deliver the Hulks, or cause the Hulks to be delivered, to the Rebuilder at the plant of the Rebuilder located at the rebuilding site identified in Schedule A hereto. The Rebuilder will deliver the reconstructed Equipment to the Owner for acceptance in the manner provided in Section 4 hereof with freight charges, if any, prepaid by the Rebuilder at the delivery point or points mutually agreed upon by the Owner and the Rebuilder from time to time following the execution and delivery of this Agreement, but such delivery and acceptance for each Item of Equipment shall take place prior to the Outside Delivery Date provided in Section 3 hereof. The Rebuilder agrees and warrants to the Owner that it will not accept for reconstruction, nor commence any reconstruction of, any Hulk if (i) the Rebuilder cannot fully reconstruct such Hulk in accordance with the Specifications prior to the Outside Delivery Date provided in Section 3 hereof, (ii) an Event of Default under the Lease, or an event which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default thereunder, shall have occurred, (iii) there shall have been commenced any proceeding or there shall have been filed any petition under the Federal or any local bankruptcy or insolvency laws by or against the Rebuilder or any of its property, or (iv) the Owner or any Participant (as defined in the Participation Agreement) shall have delivered written notice to the Rebuilder that any condition contained in Sections 4.1 through 4.6 of the Participation Agreement which is by its terms to be satisfied on or prior to the date of such notice has not been satisfied or waived.

## SECTION 3. OUTSIDE DELIVERY DATE.

The Rebuilder agrees that all Items of Equipment will be reconstructed and delivered prior to June 25, 1981 (the "Outside Delivery Date"). The Rebuilder's obligations to so reconstruct

and deliver shall be absolute and unconditional, regardless of any events which might otherwise be deemed to constitute force majeure. In the event that the Rebuilder fails to perform such obligations, Section 11 hereof shall apply.

#### SECTION 4. INSPECTION AND ACCEPTANCE.

The Owner shall designate a representative to accept delivery of each Item of Equipment hereunder, which representative may be an employee of the Lessee. Notwithstanding the acceptance of an Item of Equipment hereunder by the Owner, all of the Rebuilder's obligations herein set forth shall survive delivery, including, without limitation, the obligation to rebuild the Hulks in accordance with the Specifications.

#### SECTION 5. PAYMENT FOR RECONSTRUCTION OF EQUIPMENT.

The reconstruction cost for each Item of Equipment shall be the amount set forth on Schedule A hereto for such Item of Equipment (the "Reconstruction Cost"). The Reconstruction Cost for each Item of Equipment shall be set forth in an invoice covering the respective Items furnished by the Rebuilder to the Owner on or prior to the Rebuilt Equipment Closing Date (as defined in the Participation Agreement) on which the Reconstruction Cost thereof is to be paid by the Owner, which invoice shall be accompanied by a statement of the Rebuilder setting forth its opinion to the effect that the Reconstruction Cost of the Items of Equipment covered thereby plus the Hulk Purchase Price (as defined in the Hulk Purchase Agreement) of the reconstructed Hulks covered by that invoice does not exceed the fair market value of such Items of Equipment. Subject to the fulfillment of the applicable conditions in the Participation Agreement, payment of the Reconstruction Cost for each Item of Equipment shall be made to the Rebuilder on the Rebuilt Equipment Closing Date therefor under the Participation Agreement by wire transfer of immediately available funds to such bank located in the United States as the Rebuilder shall designate by not less than five days' prior notice to the Owner in writing.

#### SECTION 6. RECONSTRUCTION WARRANTY.

THE OWNER MAKES NO WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE HULKS OR THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE EQUIPMENT HEREUNDER. The Rebuilder warrants that the Hulks will be reconstructed in accordance with the Specifications and any changes thereto approved by the Owner and warrants the reconstructed Items of Equipment will be free from defects in material, workmanship and design under normal use and service, the obligation of the Rebuilder under this Section 6 being

limited to making good at its plant any part or parts of any reconstructed Item of Equipment, which shall, within one year after the delivery of such reconstructed Item of Equipment to the Owner, be returned to the Rebuilder with transportation charges prepaid, and which upon examination by the Rebuilder, shall be disclosed to its reasonable satisfaction to have been thus defective. This warranty is expressly in lieu of all other warranties (other than warranties of subcontractors and suppliers which are hereby assigned to the Owner, and the warranties of the Rebuilder contained herein), express or implied, and of all other obligations or liabilities on the part of the Rebuilder except as herein provided, and the Rebuilder neither assumes nor authorizes any person to assume for it any other liability in connection with the reconstruction of the Equipment and delivery of the reconstructed Equipment except as aforesaid. The Rebuilder further agrees with the Owner that the acceptance of any reconstructed Item of Equipment hereunder shall not be deemed a waiver by the Owner of any of its rights under this Section.

#### SECTION 7. REPRESENTATION AND WARRANTY AS TO TITLE.

The Rebuilder represents that upon completion of the reconstruction of each Item of Equipment hereunder, at the time of delivery and acceptance of such Item by the Lessee as lessee under the Lease, such Item will be free and clear of all liens and encumbrances of persons claiming by, through or under the Rebuilder, other than the right of the Rebuilder to be paid the Reconstruction Cost for such Item as herein provided and the liens and encumbrances created by the Owner and Trustor under the Operative Agreements (as defined in the Participation Agreement). The Rebuilder further warrants that it will pay and discharge any and all claims which might constitute or become a lien or charge upon such Item other than claims arising from, through or under the Owner or the Trustor unless the Rebuilder shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not, in the opinion of the Owner, affect or endanger the title and interest of the Owner to such Item. The Rebuilder's obligations under this Section 7 shall survive the completion of reconstruction and payment for the Equipment as provided herein.

#### SECTION 8. REBUILDER'S INDEMNITY.

The Rebuilder hereby agrees to indemnify and hold the Owner in both its individual and fiduciary capacities and the Trustor and the Note Purchaser (as defined in the Participation Agreement) and their respective successors, assigns, directors, officers and agents harmless from and against any and all losses, claims, liabilities and expenses which arise out of or relate to

the ownership interest of the Owner in any Hulk during the period of reconstruction thereof or the reconstruction of such Hulk or any testing or other processing of such Hulk prior to acceptance of such reconstructed Hulk by the Lessee under the Lease (including claims for patent, trademark or copyright infringement in connection with the reconstruction of such Hulk as provided herein and claims for strict liability in tort).

#### SECTION 9. INSURANCE.

The Rebuilder will at all times during the period from the delivery of a Hulk to it hereunder to and including the (a) delivery of such Hulk as an Item of Rebuilt Equipment to the Lessee under the Lease or (b) sale or other disposition of a Non-completed Hulk (as hereinafter defined) pursuant to Section 11 hereof, at its own expense, cause the Hulks to be insured, in the same manner and to the same extent as if such Hulks were subject to the insurance provisions of Section 11 of the Lease, and evidence thereof shall be furnished as provided in the Lease.

#### SECTION 10. RIGHT OF INSPECTION.

During reconstruction, including, without limitation, all phases of fabrication and assembly, the Hulks and all work thereon shall be subject to inspection and approval by the Owner, the Trustor, the Security Trustee and the Note Purchaser; provided, however, that any inspection or failure to inspect by any such party shall not affect any of their respective rights hereunder. The Rebuilder shall grant to the authorized inspectors of each such party access to all portions of its plant where Hulks are being reconstructed.

#### SECTION 11. FAILURE TO RECONSTRUCT.

If and to the extent that any Hulks are not reconstructed and accepted pursuant to this Reconstruction Agreement and the Lease on or before June 25, 1981 (the "Non-completed Hulks"), the Rebuilder agrees, upon receipt of written instructions to such effect from the Owner and as agent for the Owner, to sell the Non-completed Hulks to a party other than the Rebuilder or any affiliate of the Rebuilder, on or before July 1, 1981, at the highest cash price obtainable. On July 1, 1981, the Rebuilder will pay to the Owner the Net Proceeds from such sale and, if such Net Proceeds (as defined below) are less than the Aggregate Hulk Purchase Price (as defined below) plus interest thereon at the Prime Rate (as defined in the Notes) for the period from and including the Hulk Closing Date (as defined in the Participation Agreement) to but not including July 1, 1981, the Rebuilder will, as liquidated damages for failure to complete the reconstruction of the Non-completed Hulks as provided in this Reconstruction

Agreement, pay to the Owner on July 1, 1981, an amount equal to the difference; provided that all rights of both the Rebuilder and the Owner in and to the Non-completed Hulks and the proceeds thereof shall be subject and subordinate to the prior right and security interest therein of the Security Trustee under the Security Agreement. The Owner agrees to furnish to the Rebuilder all such bills of sale, without recourse or warranty, as shall be reasonably required to enable the Rebuilder to effect the sale of the Non-completed Hulks for the account of the Owner as aforesaid. For purposes of this Section only, "Aggregate Hulk Purchase Price" shall mean the sum of the respective Hulk Purchase Prices for each Non-completed Hulk and "Net Proceeds" shall mean gross sales proceeds less selling expenses less, to the extent Net Proceeds are not reduced below the Aggregate Hulk Purchase Price plus interest thereon as described above, the Rebuilder's reasonable Reconstruction Cost plus a reasonable overhead factor (such latter deduction being hereinafter referred to as the "Rebuilder's Portion of the Gross Proceeds").

#### SECTION 12. LIMITATIONS ON LIABILITY.

Anything herein to the contrary notwithstanding, the Owner shall have no obligation to pay for the reconstruction of the Equipment unless funds sufficient for such purposes have been advanced by the Trustor. Each and all of the representations, warranties, undertakings and agreements herein made on the part of the Owner are made and intended not as personal representations, warranties, undertakings and agreements by The Connecticut Bank and Trust Company for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement and this Reconstruction Agreement is executed and delivered by the said bank not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence by said bank or the Trustor, as the case may be, no personal liability or personal responsibility is assumed hereunder by or shall at any time be enforceable against the said bank or the Trustor, as the case may be, on account of any representation, warranty, undertaking or agreement hereunder of the Owner or the Trustor, as the case may be, either express or implied, all such personal liability (except as aforesaid), if any, being expressly waived by the Rebuilder and by all persons claiming by, through or under the Rebuilder; provided, however, that the Rebuilder or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same; and provided further that nothing in this Section 12 shall limit the obligation of the Trustor to advance funds sufficient to pay for the reconstruction of the Equipment, subject only to the terms and conditions provided in the Participation Agreement.



SECTION 13. NOTICES.

Any notice to be given by either party hereto to the other shall be in writing and shall be deemed to have been duly given when delivered personally or otherwise actually received

at the following addresses:

If to the Rebuilder: Waterloo Railroad Company  
Two Illinois Center  
233 North Michigan Avenue  
Chicago, Illinois 60601  
Attention: Treasurer

If to the Owner: The Connecticut Bank and Trust  
Company  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust Department

(With copies to the Trustor at its  
address specified in the  
Participation Agreement)

or at such other address as such party shall hereafter furnish to the other party in writing.

SECTION 14. SUCCESSORS AND ASSIGNS.

References to any party herein shall be deemed to include the successors and assigns of such party; provided, however, that no assignment by the Rebuilder or any assignee thereof shall subject any assignee to, or relieve the Rebuilder from, any of the obligations of the Rebuilder hereunder. Each party hereto may conclusively assume that there has been no assignment of the other party's rights under this Agreement unless and until it shall have been notified in writing of any such assignment by such assignor.

SECTION 15. LAW GOVERNING.

This Reconstruction Agreement shall be construed in accordance with the laws of the State of Illinois.

SECTION 16. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunder duly authorized as of the day and year first above written.

(Seal)

Attest:

\_\_\_\_\_  
Assistant Secretary


WATERLOO RAILROAD COMPANY

By \_\_\_\_\_  
Its Vice President

REBUILDER

(Seal)

Attest:

  
\_\_\_\_\_  
Assistant Vice President

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee under  
I.C.G. Trust No. 81-2

By   
\_\_\_\_\_  
~~Its Authorized Owner~~  
ASSISTANT VICE PRESIDENT

OWNER

STATE OF CONNECTICUT     )  
                                      ) SS  
COUNTY OF HARTFORD     )

On this 10<sup>th</sup> day of April, 1981, before me personally appeared DONALD F. SMITH, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carol Lee Shattuck  
Notary Public

[NOTARIAL SEAL]

My commission expires:

CAROL LEE SHATTUCK  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1985

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF COOK     )

On this \_\_\_\_\_ day of April, 1981, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a Vice President of WATERLOO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:

DESCRIPTION OF EQUIPMENT

Reconstruction Specifications: See Annex I hereto

Outside Delivery Date: June 25, 1981

Location of Rebuilder's Plant: Paducah, Kentucky

<u>Number of Items</u>	<u>Description of Hulk</u>	<u>Description of Rebuilt Units</u>	<u>Reconstruction Cost per Item</u>	<u>Aggregate Reconstruction Cost</u>
13	SW-14 locomotives marked and numbered as follows:  ICG 1201, ICG 1206, IC 477, IC 439, ICG 471, IC 467, ICG 484, IC 458, CIW 102, IC 441, ICG 478, ICG 482, CIW 101	ICG 1465- ICG 1477, both inclu- sive	\$417,500	\$5,427,500

ANNEX I  
TO DESCRIPTION OF EQUIPMENT

Specifications for Reconstruction

The design, quality and component parts of each Item of Equipment as reconstructed will conform to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment (as so reconstructed) as of the date of delivery of such Item and to the further specifications set forth below.

	<u>SW-14</u>
Horsepower (minimum)	1,200
Engine (minimum)	12-567BC
Generator (Main)	D15C
Traction Motors	D27, 37
Generator (auxiliary)	10KW
Air Brakes	26NL
Fuel Capacity (gallons)	600
Gear Ratio	62:15
Electric Cab Heat	